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Arizona Corporation Commission
BEFORE THE ARIZONA CORPORATION COMMISSION

JIM IRVIN
 COMMISSIONER-CHAIRMAN
 TONY WEST
 COMMISSIONER
 CARL J. KUNASEK
 COMMISSIONER

MAY 13 1999

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
 ILLINOVA ENERGY PARTNERS, INC. FOR A
 CERTIFICATE OF CONVENIENCE AND
 NECESSITY TO PROVIDE COMPETITIVE
 RETAIL ELECTRIC SERVICES AS AN
 ELECTRIC SERVICE PROVIDER PURSUANT TO
 A.A.C. R14-2-1601 *ET SEQ.*

DOCKET NO. E-03662A-98-0675

DECISION NO. 61707**OPINION AND ORDER**

DATE OF HEARING: March 3, 1999

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Teena Wolfe

APPEARANCES: Mr. Michael W. Patten, BROWN & BAIN, PA, on behalf of Applicant
 Illinova Energy Partners, Inc.;

Mr. Todd C. Wiley, GALLAGHER & KENNEDY, on behalf of
 Arizona Electric Power Cooperative, Graham County Electric
 Cooperative, Duncan Valley Electric Cooperative, Trico Electric
 Cooperative, Inc. (for Mr. Russell E. Jones), and Sulphur Springs
 Valley Electric Cooperative, Inc. (for Mr. Christopher Hitchcock);

Mr. Jeffrey B. Guldner, SNELL & WILMER, LLP, on behalf of
 Arizona Public Service Company;

Mr. Randall H. Warner, ROSHKA, HEYMAN & DEWULF, PLC, on
 behalf of Intervenor NEV Southwest, LLC;

Ms. Karen E. Nally, Staff Counsel, on behalf of Intervenor Residential
 Utility Consumer Office; and

Mr. Peter A. Breen, Staff Attorney, Legal Division, on behalf of the
 Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On November 23, 1998, Illinova Energy Partners, Inc. ("IEP") filed with the Arizona
 Corporation Commission ("Commission") an application for a Certificate of Convenience and
 Necessity to supply competitive retail electric services as an Electric Service Provider pursuant to
 A.A.C. R14-2-1601 *et seq.* ("Application"). In its Application, IEP proposed to provide competitive

1 retail electric service as a Load-Serving Entity and as an Aggregator in all areas in the State
2 Arizona which the Commission has designated as open to retail electric competition.

3 On December 17, 1998, the Commission's Utilities Division Staff ("Staff") filed its Staff
4 Report in this matter, recommending approval of the Application following a hearing.

5 By Procedural Order dated December 30, 1998, all the Affected Utilities as defined by the
6 Retail Electric Competition Rules¹ were joined as parties in this matter with the opportunity to
7 respond to IEP's Application, and were given notice that if the Application was granted, their
8 Certificates of Convenience and Necessity ("Certificates" or "CC&Ns") would be rescinded, altered,
9 or amended pursuant to A.R.S. §40-252. Those parties so joined and noticed include Tucson Electric
10 Power Company, Arizona Public Service Company, Citizens Utilities Company, Arizona Electric
11 Power Cooperative, Trico Electric Cooperative, Duncan Valley Electric Cooperative, Graham County
12 Electric Cooperative, Mohave Electric Cooperative, Sulphur Springs Valley Electric Cooperative,
13 Navopache Electric Cooperative, Ajo Improvement Company, and Morenci Water and Electric
14 Company, and are referred to collectively herein as "Affected Utilities."

15 Other parties who requested and were granted intervention in this matter include the
16 Residential Utility Consumer Office ("RUCO"), NEV Southwest, L.L.C. ("NEV"), Cyprus Climax
17 Metals Company ("Cyprus"), ASARCO Incorporated ("ASARCO"), and Enron Corp. ("Enron").

18 On February 9, 1999, Staff filed a Supplemental Staff Report in this matter.

19 This matter came before a duly authorized Hearing Officer of the Commission at the
20 Commission's offices in Phoenix, Arizona on March 3, 1999. Applicant and Staff presented
21 evidence at the hearing. At the conclusion of the hearing, the matter was taken under advisement
22 pending submission of a Recommended Opinion and Order to the Commission.

23 * * * * *

24 Having considered the entire record herein and being fully advised in the premises, the
25 Commission finds, concludes, and orders that:

26 ¹ A.A.C. R14-2-1601 *et seq.*, which were in effect on the date the December 30, 1998 Procedural Order was issued.
27 Decision No. 61311 (January 11, 1999) stayed the effectiveness of the Retail Electric Competition Rules. Pursua
28 Decision No. 61634 (April 23, 1999), Staff has forwarded new Proposed Retail Electric Competition Rules ("Prop
Rules") to the Office of the Secretary of State for Notice of Proposed Rulemaking. Sections 1601 of both the stayed
Rules and the Proposed Rules define the same entities as "Affected Utilities."

1 **FINDINGS OF FACT**

2 1. On November 23, 1998, IEP filed its Application requesting certification as an
3 Electric Service Provider ("ESP") with authority to provide competitive retail electric services as a
4 Load-Serving Entity and as an Aggregator in all areas in the State of Arizona which the Commission
5 has designated as open to retail electric competition.

6 2. IEP, a wholly-owned subsidiary of Illinova Corporation, an Illinois corporation, is a
7 Delaware corporation authorized to transact business in the State of Arizona. IEP is one of five
8 subsidiaries held by Illinova Corporation.

9 3. On November 20, 1998, IEP's Notice of Filing Application for a Certificate of
10 Convenience and Necessity was docketed with the Commission.

11 4. On December 17, 1998, the Commission's Utilities Division Staff ("Staff") filed its
12 Staff Report in this matter, recommending that IEP be granted a CC&N as an Electric Service
13 Provider with authority to provide competitive retail electric services as a Load-Serving Entity and
14 Aggregator.

15 5. By Procedural Order dated December 30, 1998, the Affected Utilities were joined as
16 parties in this matter with the opportunity to respond to IEP's Application, and were given notice that
17 if the Application was granted, their CC&Ns would be rescinded, altered, or amended pursuant to
18 A.R.S. §40-252.

19 6. On January 13, 1999, IEP caused notice of the hearing to be published in the Arizona
20 Republic.

21 7. On February 9, 1999, Staff filed its Supplemental Staff Report in this matter
22 containing Staff recommendations that placed additional conditions on the approval of IEP's
23 Application.

24 8. On March 3, 1999, a public hearing was held as scheduled, at which Mr. Mark Allen
25 and Ms. Laurie McTavish for Applicant and Mr. Lynn J. Garrett for Staff presented evidence.

26 9. At the hearing, the parties stipulated to incorporate into the record in this proceeding
27 the testimony and cross-examination of Mr. Williamson and Mr. Shand of Commission Staff in the
28 proceedings on the application of PG&E Energy Services Corporation for a Certificate of

1 Convenience and Necessity to Supply Competitive Services as an Electric Service Provider, Doc'
2 No. E-0359A-98-0389.

3 10. The Application proposed a maximum tariff rate of \$25 per kilowatt hour for electric
4 energy and aggregation provided pursuant to contract between IEP and nonresidential, commercial,
5 and industrial customers.

6 11. Illinova does not seek Certification at this time as a Meter Service Provider or Meter
7 Reading Service Provider, but requests Commission authorization to resell those services to its
8 customers.

9 12. Staff's recommendation at the hearing was that approval of the Application be made
10 subject to the following conditions:

11 (a) IEP have a service acquisition agreement, approved by the Director, Utilities
12 Division, with the Utility Distribution Company in each service area prior to
13 providing service within that service area;

14 (b) IEP either have a service agreement with a Scheduling Coordinator certified by
15 the Arizona Independent System Administrator or become certified by
16 Arizona Independent System Administrator as its own Scheduling Coordinator
17 prior to the provision of service;

18 (c) IEP acquire a financial guarantee bond in the initial amount of \$100,000 to be
19 adjusted in the future on the basis of sales value and any amounts that the
20 applicant collects by way of deposits or advance payments;

21 (d) IEP shall not be authorized to provide competitive service in the certificated
22 area of an Affected Utility until the Commission has reached a final resolution
23 in that Affected Utility's respective Stranded Cost filing; and

24 (e) IEP shall not be eligible to provide competitive retail electric services in areas
25 opened to competition by enacted HB 2663 until April 1, 1999, or further order
26 of the Commission, whichever occurs first.

27 13. IEP testified at the hearing that it had filed the \$100,000 financial guarantee bond that
28 day prior to the hearing.

29 14. NEV proposed at the hearing that the Order granting IEP's CC&N also contain the
30 following conditions, which are similar to those included in the Order granting PG&E Energy
31 Services Corporation a Certificate of Convenience and Necessity to Supply Competitive Service
32 as an Electric Service Provider (Docket No. E-0359A-98-0389):

1 (a) IEP shall cooperate with any Commission investigation of customer or
2 competitor complaints, including, but not limited to complaints regarding
3 cross-subsidization from Illinois Power Company; and

4 (b) Failure of IEP to comply with any Commission investigation may result in
5 rescission of IEP's CC&N pursuant to A.A.C. R14-2-1603(I).

6 15. NEV also proposed that IEP's CC&N be conditioned on IEP's compliance with
7 affiliate transaction rules in the form in which they are finally adopted by the Commission.

8 16. The Proposed Rules would require all ESPs' CC&Ns to be conditioned upon
9 compliance with all Commission rules, Orders, and other requirements relevant to the provision of
10 electric service.

11 17. IEP is licensed as a power marketer by the Federal Energy Regulatory Commission.

12 18. IEP is currently authorized to provide competitive retail electric service in the states of
13 Montana, Oregon, and Washington. IEP was also registered in California as a residential and small
14 commercial energy service provider, but has allowed its registration to expire due to its decision not
15 to participate in that market.

16 19. IEP is certified by the California Independent System Operator to operate as a
17 Scheduling Coordinator, and currently manages power deliveries for 45,000 meters served by
18 Commonwealth Energy Corporation in California.

19 20. IEP's operational experience also includes serving its own load during the 1996 and
20 1997 Illinois Power Company and Central Illinois Lighting Company retail experiments, and is
21 currently serving its own load in the Pacific Northwest pilot programs.

22 21. The Application states that Illinova Corporation guarantees the performance of IEP
23 and Tenaska Marketing Ventures, of which IEP owns fifty percent, up to an aggregate of \$80 million
24 for credit support. The level of credit support in place at December 31, 1997 was \$45 million.

25 22. IEP possesses the requisite technical and financial capability to provide competitive
26 Electric Service Provider services as a Load-Serving Entity and as an Aggregator within the State of
27 Arizona.
28

CONCLUSIONS OF LAW

1
2 1. IEP is a public service corporation within the meaning of Article XV of the Arizona
3 Constitution.

4 2. The Commission has jurisdiction over IEP and the subject matter of the Application.

5 3. Notice of the hearing was given in accordance with law.

6 4. The Arizona Legislature's enactment of House Bill 2663 and the Commission's
7 issuance of Decision Nos. 59943, 60977, 61017, and 61634 have made it clear that competition in the
8 provision of retail electric services is the public policy of Arizona.

9 5. IEP should receive a CC&N as an ESP authorized to provide services as a Load-
10 Serving Entity and as an Aggregator.

11 6. IEP's CC&N should be subject to the conditions recommended by Staff in Findings of
12 Fact No. 12 above and to those recommended by NEV as stated in Findings of Fact No. 14 above.

13 7. IEP should be authorized to resell Meter Service and Meter Reading Service to its
14 customers.

15 8. Rates and terms and conditions of service adopted herein are fair, reasonable and
16 consistent with the Proposed Rules and with the underlying policies of the Arizona Constitution.

17 9. The Affected Utilities received notice of the possibility of rescission, alteration or
18 amendment of their existing CC&Ns should IEP receive a CC&N to supply competitive services as
19 an Electric Service Provider within the service territories of the Affected Utilities.

20 10. The Affected Utilities had an opportunity to be heard on the possibility of rescission,
21 alteration or amendment of their existing CC&Ns.

22 11. Issuance of a CC&N requires the Certificate holder to make an adequate investment
23 and to render competent and adequate service.

24 12. There was no evidence presented in this proceeding indicating that any of the Affected
25 Utilities had failed to render adequate service or had charged unreasonable rates.

26 13. IEP should file documents to be approved by the Director, Utilities Division, that
27 clarify the extent of the financial commitment IEP has received from its parent company.

28 14. Granting IEP's Application for a CC&N to supply Competitive Services as an Electric

1 Service Provider within the service territories of the Affected Utilities is in the public interest,
2 because it will provide a reasonable opportunity for the potential benefits of competition to develop
3 in the State of Arizona.

4 15. It is not in the public interest to rescind, alter or amend the CC&N of any Affected
5 Utility prior to final resolution of the Stranded Cost issues for that Affected Utility.

6 **ORDER**

7 IT IS THEREFORE ORDERED that the application of Illinova Energy Partners, Inc. for an
8 Electric Service Provider Certificate of Convenience and Necessity is hereby granted, and that
9 Illinova Energy Partners, Inc. is thereby authorized to supply competitive retail electric services as a
10 Load-Serving Entity and as an Aggregator in all areas of the State of Arizona which are opened to
11 retail electric competition.

12 IT IS FURTHER ORDERED that prior to providing service within the service area of any
13 Utility Distribution Company, Illinova Energy Partners, Inc. shall have a Service Acquisition
14 Agreement with that Utility Distribution Company approved by the Director, Utilities Division.

15 IT IS FURTHER ORDERED that prior to providing service, Illinova Energy Partners, Inc.
16 shall either have a service agreement with a Scheduling Coordinator certified by the Arizona
17 Independent System Administrator or become certified by the Arizona Independent System
18 Administrator as its own Scheduling Coordinator.

19 IT IS FURTHER ORDERED that within thirty days of the date of this Decision, Illinova
20 Energy Partners, Inc. shall file documents to be approved by the Director, Utilities Division, that
21 clarify the extent of the financial commitment Illinova Energy Partners, Inc. has received from its
22 parent company.

23 IT IS FURTHER ORDERED that Illinova Energy Partners, Inc. is hereby authorized to resell
24 Meter Services and Meter Reading Services to its customers.

25 IT IS FURTHER ORDERED that Illinova Energy Partners, Inc. shall cooperate with any
26 Commission investigation of customer or competitor complaints, including, but not limited to,
27 complaints regarding cross-subsidization from Illinois Power Company.

28 IT IS FURTHER ORDERED that failure of Illinova Energy Partners, Inc. to comply with any

1 Commission investigation may result in rescission of Illinova Energy Partners, Inc.'s Certificate
2 Convenience and Necessity.

3 IT IS FURTHER ORDERED that Illinova Energy Partners, Inc. shall not be authorized to
4 provide Competitive Services in any Certificated area of any Affected Utility until the Certificate of
5 Convenience and Necessity of the respective Affected Utility has been amended.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9 
10 COMMISSIONER-CHAIRMAN COMMISSIONER COMMISSIONER
11

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoe
16 this 13th day of May, 1999.

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18 BRIAN C. McNEIL
19 EXECUTIVE SECRETARY

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18 DISSENT _____
19 TIW:dap

SERVICE LIST FOR:

ILLINOVA ENERGY PARTNERS, INC.

DOCKET NO.

E-03662A-98-0675

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13 Copies also mailed to:
Electric Competition Service List – Docket No. RE-00000C-94-0165
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